

## Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 EB-08 CIAE-00 INR-10  
NSAE-00 SS-15 NSC-05 OMB-01 TRSE-00 PA-01 ICA-11  
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TO SECSTATE WASHDC 7683  
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C O N F I D E N T I A L VIENNA 07584

REF: STATE 210808; SCHWEBEL-ROVINE TELECON 8/21/78

E.O. 11652: GDS  
TAGS: PFOR, UN  
SUBJECT: UN CONFERENCE ON SUCCESSION OF STATES IN  
- RESPECT OF TREATIES

1. THE CONFERENCE PLENARY ADOPTED ON AUGUST 22 ARTICLE  
12 BIS AS FOLLOWS: QUOTE NOTHING IN THE PRESENT CONVEN-  
TION SHALL AFFECT THE PRINCIPLES OF INTERNATIONAL LAW  
AFFIRMING THE PERMANENT SOVEREIGNTY OF EVERY PEOPLE AND  
EVERY STATE OVER ITS NATURAL WEALTH AND RESOURCES UNQUOTE.  
THE ROLL-CALL VOTE WAS 73-1-(US)-8. THE ABSTAINING  
STATES WERE BELGIUM,CANADA, FRANCE, FRG, ISRAEL, JAPAN,  
NETHERLANDS, UNITED KINGDOM.

2. US DEL STATEMENT EXPLAINING NEGATIVE VOTE EMPHASIZED  
OUR UNDERSTANDING THAT THE UN DECLARATION ON PERMANENT  
SOVEREIGNTY OVER NATURAL RESOURCES WAS THE ONLY GENERALLY  
ACCEPTED DETAILED STATEMENT GIVING MEANING TO THE  
PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES,  
BUT THAT AMBIGUITY IN ARTICLE 12 BIS AND ITS LEGISLATIVE  
HISTORY MADE IT IMPOSSIBLE TO ACCEPT. UK, FRANCE, AND  
FRG DELS MADE SIMILAR STATEMENTS IN EXPLAINING THEIR  
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ABSTENTIONS.

3. DESPITE US EFFORTS, NONE OF THE WEO GROUP WOULD AGREE  
TO VOTE AGAINST ARTICLE 12 BIS, AND MOST VOTED IN FAVOR.  
THE WEO MEMBERS VOTING FOR ARTICLE 12 BIS WERE AUSTRALIA,  
AUSTRIA, DENMARK, FINLAND, GREECE, HOLY SEE, IRELAND,  
ITALY, NEW ZEALAND, NORWAY, PORTUGAL, SPAIN, SWEDEN,

SWITZERLAND, TURKEY.

4. WE ARE NOT CERTAIN AS TO INSTRUCTIONS OF MOST WEO MEMBERS. UK (SINCLAIR) AND FRANCE (MUSEUX) RECEIVED SPECIFIC INSTRUCTIONS ON ARTICLE 12 BIS. THE FRG WAS REPRESENTED BY CARL FLEISCHAUER, THE LEGAL ADVISOR, WHO CONFIDENTIAL

TOLD US THAT HE IS RESPONSIBLE FOR FRG INSTRUCTIONS ON THIS ISSUE. SWITZERLAND (RITTER) SAID HE MADE THE PROPOSAL ONLY IN HIS CAPACITY AS CHAIRMAN OF THE INFORMAL WORKING GROUP ON ARTICLE 12 BIS. HH SAID THAT HIS FUNCTION WAS TO PRODUCE A CONSENSUS, AND IN THIS CAPACITY HIS PROPOSALS WERE NOT NECESSARILY REFLECTIVE OF THE VIEWS OF HIS GOVERNMENT. HE VOTED IN FAVOR IN PLENARY BECAUSE IT WOULD NOT HAVE BEEN APPROPRIATE, HE SAID, TO VOTE AGAINST A PROPOSAL HE HAD SUGGESTED. IN PLENARY HIS VIEWS AS REPRESENTATIVE OF SWITZERLAND COULD NOT BE SEPARATED FROM HIS VIEWS AS CHAIRMAN OF THE INFORMAL CONSULTATION GROUP ON THIS ISSUE. WE PERCEIVED A GREAT DEAL OF DEFENSIVENESS IN THIS EXPLANATION.

5. UK, FRANCE, AND FRG DELS BELIEVED THAT THE PHRASE QUOTE PRINCIPLES OF INTERNATIONAL LAW AFFIRMING THE PERMANENT SOVEREIGNTY, ETC. UNQUOTE WHILE NOT GOOD, NEED NOT BE HARMFUL. IN THEIR VIEW THE WORD PRINCIPLES, CONFIDENTIAL

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IN THE PLURAL, WAS VAGUE AND DID NOT GIVE UNDUE DIGNITY TO THE PRINCIPLE OF PERMANENT SOVEREIGNTY. THEY ACKNOWLEDGED, HOWEVER, THAT THE TERM AFFIRMING WAS DAMAGING. BUT IN THEIR VIEW THE PHRASE PRINCIPLES OF INTERNATIONAL LAW WAS IN ITSELF NO BETTER OR WORSE THAN OUR PREFERRED IN ACCORDANCE WITH INTERNATIONAL LAW. BOTH LENT THEMSELVES TO VARYING INTERPRETATIONS. WHILE OUR FORMULA WAS PREFERABLE, THE SWISS PROPOSAL WAS NOT SO DII MAYING AS TO JUSTIFY THE POLITICAL COST OF A NEGATIVE VOTE. THUS THE US ISOLATION ON THE POINT.

6. US DEL ARGUED IN THESE CONSULTATIONS ALONG THE LINES SET FORTH IN REFTTEL, AND ARGUED THAT THE PRECEDENTIAL VALUE OF THE SWISS FORMULATION IN A LEGALLY BINDING TREATY WAS QUITE SUBSTANTIAL. CLEARLY WE HAD NO SUCCESS. THE ONLY DELEGATION THAT APPEARED CLOSE TO A NEGATIVE VOTE AT ANY POINT WAS THAT OF FRANCE. FRENCH INSTRUCTIONS ON 12 BIS WERE TO VOTE AGAINST OR ABSTAIN, AND THE FRENCH DELEGATE CHOSE TO ABSTAIN.

7. US DEL BELIEVES THAT THE ARTICLE 12 BIS FORMULATION WILL NOW BEGIN TO APPEAR IN OTHER CONTEXTS, THAT IT

WILL BE HIGHLY DAMAGING, AND THAT MUCH WORK ON THIS  
ISSUE REMAINS TO BE DONE WITH WEO STATES. BORG

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